No. 86-368

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

MILO L. RAFFAELLI, JR.,

Petitioner,

vs.

BOARD OF FIRE AND POLICE COMMISSIONERS OF THE VILLAGE OF JUSTICE, ILLINOIS, PAUL B. KELLY, ROCCO MUSCIA, and JOSEPH FRANK, Commissioners of the Board of Fire and Police Commissioners of the Village of Justice, Illinois, DEAN J. LISINSKI, Mayor of the Village of Justice, Illinois, EUGENE G. WROBLEWSKI, Chief of Police of the Village of Justice, Illinois, JERRY W. CARTER, PAUL WASIK, and LEONARD J. SUDDETH, Police Officers of the Village of Justice, Illinois, and THE VILLAGE OF JUSTICE, ILLINOIS,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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SUMMARY OF ARGUMENT

The Petition for a Writ of Certiorari filed herein should be denied for the following reasons: First, it fails to set forth any of the considerations governing review on cer-

tiorari set forth in Rule 17 of the Rules of Practice of the Supreme Court of the United States. Secondly, having failed to attempt to raise constitutional issues on administrative review in the state court, Petitioner cannot now complain that the state courts do not provide a forum for litigating such issues. Finally, it has been held that state courts do provide an adequate forum for litigating constitutional claims raised on administrative review.

ARGUMENT

The Petition for a Writ of Certiorari filed herein should not be granted for the following reasons: First, none of the considerations set forth in Rule 17 of the Rules of Practice of the Supreme Court of the United States is present in the instant case.

Secondly, granting that Rule 17 is not an exclusive listing of those criteria which might be the basis for this Court's granting the petition herein, the Petitioner has failed to bring himself within the purview of the issue which he seeks to raise.

Specifically, while Petitioner contends that state proceedings reviewing administrative agency decisions fail to provide full and fair opportunity to resolve alleged constitutional violations, that assertion, insofar as Petitioner is concerned, is merely conjecture. Petitioner is not able to state that he was deprived of the opportunity to litigate or resolve any alleged constitutional violation in any state court. As was pointed out by the Seventh Circuit Court of Appeals when it upheld dismissal of Petitioner's complaint:

> His [Petitioner's] assertion that state proceedings "could not dispose of his First Amendment violation" is wrong because there is no indication that the state tribunals were unwilling to consider it and even if they were unwilling to consider it, there is no indication that Raffaelli [Petitioner] made the necessary attempt to raise the issue. [Petitioner's Appendix A, Page 3a]

This is not, as Petitioner suggests, a case similar to *Jones v. City of Alton*, 757 F.2d 878 (7th Cir. 1985), where Plaintiff sought, but was denied, the opportunity to argue a constitutional claim in the state court upon administrative review. Rather, the present case is similar to *Lee v. City of Peoria*, 685 F.2d 196 (7th Cir. 1982), where Plaintiff could have raised his constitutional claim on administrative review, but failing to do so, found his federal court suit barred as *res judicata*.

As pointed out in the well-reasoned opinion of the Seventh Circuit Court of Appeals (Petitioner's Appendix A, pp. 1a-4a) and the Report and Recommendations of the Magistrate recommending dismissal of Petitioner's complaint (Petitioner's Appendix B, pp. 7a-23a) which was adopted by the District Court, dismissal of Petitioner's complaint is well supported by the law, and Petitioner has introduced nothing to the contrary.

Finally, Petitioner's assertion that constitutional claims cannot be raised in state administrative review proceedings is simply not correct. As pointed out by the Court in *Reich v. City of Freeport*, 257 F.2d 666 (7th Cir. 1975), at page 671, "Plaintiff's charge of constitutional violations did appear in the administrative review record; if the Court thought that more evidence was necessary to determine the constitutional claims, it had the power to remand the case to the agency for further evidence."

CONCLUSION

For the reasons set forth herein, the Petition for a Writ of Certiorari filed in this cause should be denied.

Respectfully submitted,

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